UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/50/Add.1
20 March 2000

ENGLISH
Original: ENGLISH/FRENCH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 10 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights

Report submitted by Mrs. Fatma-Zohra Ouhachi-Vesely, Special Rapporteur on the illicit movement and dumping of toxic waste

Addendum

Report on the mission to Germany and the Netherlands

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Introduction

1. In accordance with the mandate given to her by the Commission on Human Rights in resolutions 1995/81 and 1999/23, the Special Rapporteur wished to undertake a mission to Europe in order to ascertain the problems arising in certain countries in the region with regard to the illegal traffic in toxic and dangerous products and wastes and the enjoyment of human rights. Accordingly, at the invitation of the German and Netherlands Governments, she visited Germany and the Netherlands from 18 to 29 October 1999, as a follow-up to her visits to Africa in 1997 and Latin America in 1998.

2. The purpose of this mission was to hold consultations, study the laws in force in the two countries and learn more about their policy. The Special Rapporteur was also keen to exchange views with the authorities regarding specific allegations of illicit exports of toxic and dangerous products to developing countries. She also intended to study national and regional measures to prevent and punish such illicit activities.

3. In addition, the Special Rapporteur wished to take the opportunity to sensitize the German and Netherlands authorities to the importance of her mandate from the human rights perspective, and to the complementarity of her work with that of the secretariat of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, as well as other United Nations bodies.

4. The Special Rapporteur is grateful to the German and Netherlands Governments for their full cooperation and the assistance they extended to her during her mission. She also wishes to thank national institutions and non-governmental organizations (NGOs) for making themselves available and supplying her with information, and the staff of the United Nations information centres in Brussels and Bonn for the logistical support given to her mission.

I. TALKS AND CONSULTATIONS IN THE NETHERLANDS

5. During her visit to the Netherlands, the Special Rapporteur met senior officials from the Ministry of Foreign Affairs, the Ministry of Housing, Spatial Planning and Environment, and the Ministry of Health, Welfare and Sport. She also talked with members of the Committee on Human Rights of the Advisory Council on International Affairs, the national Ombudsman and the Prosecutor handling the case of the contaminated glycerine sold by a Netherlands company to a Haitian pharmaceuticals enterprise. The Special Rapporteur also had a discussion with the representative of Greenpeace International responsible for the transboundary movement of toxic waste. She visited the control facility at the Port of Rotterdam where containers for hazardous substances and products are checked as they enter and leave the port, and talked with the customs officials in charge of the facility.

A. Toxic and dangerous product management

6. The national policy for managing toxic and dangerous products is defined by a Multi-Year Plan for Hazardous Wastes for the period 1997-2007, based on European

Directive 75/442/EEC. The plan aims to prevent the production of hazardous waste, encourage the storage of dangerous waste in appropriate facilities without risk to the environment, and dispose of waste that cannot be stored by using state-of-the-art techniques.

7. The principal means of securing these objectives are legislation and regulation (e.g., issuance of licences, administrative, police and customs checks, local by-laws and ordinances, and administrative decisions), financial incentives, research, publicity and selection of sites.

8. According to article 5 of Council Directive 75/442/EEC (itself based on the Basel Convention), the centrepiece of this policy is to ensure that the Netherlands has adequate capacity to store or dispose of waste as closely as possible to the site where it is produced. It also aims to prevent the export of dangerous waste to countries which lack the appropriate management capacity. A nationwide waste collection system has been established. Thus the Netherlands authorities claim that, in accordance with European law (Council Regulation No. 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community) and international law (the Basel Convention), no dangerous waste has been exported to developing countries which lack the means to process it. The authorities do not issue permits for exports of this nature. Only non-dangerous recyclable waste may be exported, and only if the exporter has obtained the proper licence.

9. The Ministry of the Environment is planning to conduct a statistical study in 2000 on the amount of waste produced and managed in the Netherlands and the amount legally exported, thereby facilitating the detection of any illegal exports.

B. Legal and institutional context

10. The Environmental Management Act (the instrument under which articles 14-18 and article 26.1 of Council Regulation (EEC) No. 259/93 are incorporated into domestic legislation), and particularly chapter 10 focusing on waste, provides the legislative framework for dangerous waste management policy. The regional authorities, in cooperation with the Ministry of the Environment, have instructions to supervise and inspect the collection, transport, storage, recycling and disposal of waste. It is therefore the responsibility of the regional authorities to license enterprises wishing to collect, store or dispose of waste.

11. As far as transboundary movements of waste are concerned, the Netherlands is a party to the Basel Convention, but has not ratified Decision III/1 (the amendment thereto) prohibiting the export of dangerous wastes for final disposal or recycling from States members of the Organization for Economic Cooperation and Development (OECD), the European Community (subsequently the European Union) or Liechtenstein to other States parties. However, because the European Union ratified the amendment to the Basel Convention and adopted the principle of a complete ban on the export of dangerous waste for disposal in non-industrialized countries well before this amendment was passed (article 14, Regulation 259/93 EEC), the Netherlands has also incorporated this provision into its law. The authorities claim that the Netherlands pioneered the inclusion of this provision in European law well before it became an amendment to the Basel Convention.

12. An Environmental Inspectorate reporting to the Ministry of the Environment has been established to ensure that the law is enforced by regional authorities and enterprises. It has a crucial role to play in tackling environmental crime, particularly the illicit movement of dangerous wastes. It can draw on the services of an environmental response team comprising special officers from the Ministry of the Environment, the police and the customs service. The Inspectorate has a presence in all five regions of the country (north, north-west, south, south-west, east).

13. A total of 125 inspectors from the Ministry of the Environment, a force of police officers including 10 environmental protection specialists, and 100 customs officers trained to detect and analyse dangerous wastes are empowered to supervise waste movements. They work together closely as a team, thereby facilitating a rapid exchange of information. The traffic police are empowered to stop and search vehicles at any time to check their load and destination, and to summon one of the 10 special environmental officers if further inquiries need to be made. A satellite tracking system enables consignments of dangerous waste to be followed from their point of origin to their destination with the aid of signals from a bar code affixed to the vehicle.

14. The inspection procedure also involves visits to enterprises which are authorized to trade in waste. In the case of illegal exports, the Ministry of the Environment takes the necessary steps to re-export consignments, as happened in 1994 when plastic wastes were exported to Indonesia and Hong Kong. In recent years, no applications have been received from developing countries to take back exported waste.

15. The export of toxic waste to third-world countries is prohibited under section 10.44 (e) of the Environment Act. Breaches of this Act are punishable by a fine or one to six years' imprisonment if the act was committed intentionally, in accordance with section 1 (a) of the Economic Offences Act. Under the Environment Act, the party responsible for the unlawful export of toxic waste is obliged to transport it back to the Netherlands (chapter 18). The Ministry of the Environment is responsible for enforcing this provision.

16. In addition, the Netherlands forms part of the European network for the implementation and enforcement of environmental law (IMPEL), a framework dating from 1992 which enables European countries to cooperate in monitoring transboundary movements. The network is an information-sharing mechanism between partners that operates through a database of national monitoring authorities. It also aims to harmonize legislation and codes, draw up lists of hazardous and non-hazardous products, and formulate licences and permits for the transport, storage and disposal of waste.

17. However, this network concentrates primarily on the movement of waste within Europe (between members of the European Union and between European Union and other European countries). The issue of waste exports to non-OECD countries seems to have come to the fore only recently, for example at the most recent conference on Transfrontier Shipments of Waste (TFS) attended by members of this network (Copenhagen, 3-5 March 1999). It was acknowledged at this meeting that "there are discrepancies between the European Union Member States on how to act in the case of export of green-listed waste to non-OECD countries, because the procedure in the European Union Regulation 259/93 (art. 17) is not clear at all points".

18. In considering the potential for cooperation and information-sharing between port-based customs authorities and the authorities responsible for preventing and punishing illicit traffic, it was pointed out that information is shared on a regular basis with the Hong Kong authorities (creation of a focal point). The Netherlands authorities are willing to extend this experiment to other countries in Latin America and Africa.

19. Responding to the Special Rapporteur's concerns on allegations that there has been an increase in the illicit trade of obsolete pharmaceuticals and chemicals which are banned in industrialized countries but which continue to be exported freely to developing countries, the Netherlands authorities stated that they enforce European legislation which stipulates that only end products permitted in Europe may be exported. The policy of the Netherlands also conforms to the standards set by the World Health Organization (WHO), for example compliance with the WHO list of export-prohibited medicines. There is no restriction on the export of starting materials destined for the manufacture of medicines in other countries. It is the responsibility of the authorities in the importing country to check the quality of imported products, a role performed in the Netherlands by a Ministry of Health inspectorate.

20. Furthermore, it was a Netherlands initiative that prompted WHO to organize an international forum at Geneva (25-27 May 1998) to adopt guidelines covering the certification, distribution and sale of starting materials for the manufacture of pharmaceuticals. The main recommendations that emerged from this meeting, as contained in document WHO/PHARM/98.605 (in English only), are as follows:

- Starting materials purported to be used as pharmaceutical starting material must meet all of the quality criteria suitable for the intended pharmaceutical use;

- Starting materials designated to be of pharmacopoeial quality should meet the respective requirements before the material can be labelled and accepted for the intended pharmaceutical use;

- Starting materials should be manufactured, handled and distributed according to WHO good manufacturing practices from the moment they are designated for pharmaceutical purposes;

- National and regional legislation on medicinal products should be extended to cover starting materials;

- National and regional legislation on medicinal products, including starting materials, should be extended to free ports;

- Key parties in the chain - producers, traders, forwarders, tenderers, brokers - must be authorized for their activities by the competent health authority of the country in which each activity occurs. [...] Authorization requires adequate inspection. Failure to follow the requirements of the authorization must have appropriate legal consequences. There should be free and open exchange of information on such cases between Governments;

- [...]

- WHO should issue guidance about the certificate of analysis, which should represent the original data, including the name of the manufacturer, the batch number, the results of qualitative and quantitative measurements, the methods used (specifications), and the signature of the issuer of the certificate of analysis.

[...]

C. Visit to the Port of Rotterdam

21. The visit to the Port of Rotterdam enabled the Special Rapporteur to acquaint herself with the working methods of the Environmental Inspectorate. In 1999 the customs service took delivery of a powerful scanner which is able to detect or provide a rough idea of what is inside containers entering and leaving the port. The Special Rapporteur attended a demonstration of this equipment.

22. Aware that Rotterdam is a transit port for goods exported onwards to a wide variety of destinations, the port authorities seek to ensure that transit cargoes conform to Netherlands legislation and perform the necessary checks to determine any irregularities. More than 5 million containers pass through the port annually and approximately 80 a day are X-rayed. The images obtained are compared with the description of the product on the consignment note. If the images are suspicious, the container is opened to check its contents. Thus, in a Ghana-bound container with a purported consignment of car parts, customs officers were able to discover freon-filled refrigerators.

23. According to port authority figures, about 500 unlawful attempts to export dangerous waste products are exposed every year. Many of the consignments are bound for developing countries (Ghana, China, Malaysia). In Asia-bound cargoes, these attempts chiefly involve plastic wastes containing polychlorinated biphenyls (PCBs).

24. There exists a "fast-track" procedure enabling the customs authorities to refer cases to the prosecutor expeditiously with a view to taking rapid enforcement measures against persons domiciled in the Netherlands who are discovered in the very act of committing an offence.

D. Technical cooperation

25. The authorities report that the Netherlands is currently taking part in a project under the auspices of the United Nations Environment Programme (UNEP), to which they have pledged $1 million, which aims to strengthen environmental protection legislation in several developing countries. At the request of various international organizations such as the secretariat of the Basel Convention, the Netherlands is prepared to train judges, police and other officers (especially customs officials) in developing countries with the necessary skills to control the entry of goods into ports and across land frontiers.

E. Comments by the Netherlands Committee on Human Rights

26. The Committee on Human Rights is simultaneously a subsidiary body of the Advisory Council on International Affairs and an autonomous entity. It submits opinions to the Ministry of Foreign Affairs regarding human rights policy. Generally speaking, the Committee favours some form of linkage between protection of the environment – which falls within the scope of collective rights – and human rights. It has recommended that the Government should adopt a flexible position in international bodies to the extent that the recognition of collective rights contributes to the strengthening of universally recognized individual rights. The Committee als acknowledged a link between environmental protection and the right to development. Member of the Committee have thus expressed their support for the Special Rapporteur's mandate whic aims to protect the rights of individuals and whole populations to life, health and a salubrious environment.

F. Investigation of the export of contaminated glycerine to Haiti

27. The Special Rapporteur met with the Prosecutor handling the case of the Haitian childre who died after ingesting an antipyretic syrup made from glycerine unsuitable for medical use which had been exported to Haiti by a Netherlands-based company (full details may be found in the previous report, E/CN.4/1999/46, paras. 50-64). To recapitulate the salient points of the case: in 1996 and 1997 at least 48 children in Haiti allegedly died of acute kidney failure after taking contaminated liquid acetaminophen (trade name: Afebril) made by Pharval, a pharmaceutical company in Haiti. The Haitian acetaminophen was contaminated with an automobile antifreeze ingredient called diethylene glycol.

28. It is alleged that the Netherlands company Vos BV knew that the medication delivered t Haiti in 1995 and which caused the death of the Haitian children was not pure. An investigation revealed that the company had sent a sample of the glycerine to a laboratory for analysis prior to delivery. Although the results showed that the glycerine was unsuitable for medical use, it was still sold, through a German company, with a "pharmaceutical quality" certificate.

29. After questions were raised about its role by the Netherlands Ministry of Public Health, the United States Food and Drug Administration (FDA), and the competent Government bodies, Vos stated in 1997 that the glycerine had not been tested by a laboratory. However, the glycerine does in fact appear to have been tested in late February 1995 by SGS Laboratory Services in Dordrecht, around the time it was transported from Amsterdam to Haiti. According to employees of SGS Laboratory Services, that laboratory had carried out research for Vos "for years". According to the laboratory report compiled by SGS, the glycerine was only 53.9 per cent pure, whereas according to international pharmaceutical standards, glycerine must be at least 95 per cent pure. Vos BV had pasted labels on the barrels of glycerine bearing the certificate "GLYCERINE 98 PCT USP"; the designation "USP" (United States Pharmacopoeia) is an internationally recognized certification in the pharmaceutical industry.

30. The affair came to light in July 1997 after dozens of children had died in Haiti after taking paracetamol syrup for fever, sore throat and headache. The syrup, in which the glycerine delivered by Vos was an important ingredient, had been produced by the Haitian pharmaceutical company Pharval. In 1997, the Haitian Government requested help from the FDA to carry out

an investigation to discover the origin of the glycerine. FDA investigators visited different countries, including the Netherlands, and their subsequent report revealed that the glycerine had been mixed with the antifreeze diethylene glycol. In high doses, this product is fatal for children.

31. In March 1998 the Netherlands Government briefed the Special Rapporteur on the progress of the investigation launched on 4 August 1997. The conversation she had with Mr. Gert Haverkate, the Prosecutor handling the case, enabled her to note the stage reached in the inquiry. However, information which remains confidential at this stage cannot be revealed. While noting with satisfaction that legal proceedings have commenced, the Special Rapporteur stressed that the matter should be dealt with as expeditiously as possible, without sacrificing the interests of the victims or the search for the truth in favour of an amicable solution with the enterprise implicated in the affair. She also emphasized that the handling of this case would form a precedent in terms of encouraging or discouraging illicit trade in dangerous substances. While making clear her respect for the procedures in place in the Netherlands and her intention to abide by the principle of exhaustion of domestic remedies, the Special Rapporteur reiterated that she had a keen interest in the affair and would continue to monitor developments. Accordingly, she would be grateful if the Netherlands authorities would keep her abreast of all developments and notify her of any relevant court or other decision.

II. TALKS AND CONSULTATIONS IN GERMANY

32. In Germany the Special Rapporteur met Ms. Probst, Secretary of State for Environment, Nature Protection and Nuclear Safety, and other senior officials of that Ministry and the Ministry of Foreign Affairs. She also had talks with representatives of NGOs (Greenpeace International, Pesticide Action Network) and a representative of Oeko-Institut e. V.

33. A number of Government officials immediately stressed Germany's commitment to support and strengthen the special mechanisms of the Commission on Human Rights, and in that connection they plan to issue a general and standing invitation to visit Germany. As part of this open policy, they are prepared to cooperate with the Special Rapporteur notwithstanding the fact that Germany originally opposed her mandate. Other officials welcomed the Special Rapporteur's visit and said that they were aware of developing countries' concerns over the illicit trade in dangerous waste. They assured the Special Rapporteur that her visit would enable her to appreciate German efforts to prevent this practice through comprehensive management of waste products. The point was made that it was the responsibility of developed countries to take steps to reduce the output of waste or to manage waste at the point of origin. The German Government encourages German enterprises voluntarily to apply the same production standards in developing countries as are applied in Germany; it also opposes exports by polluting industries.

34. The Special Rapporteur visited the facilities of Kali und Salz at Herfa Neurode (Hesse) region. This company, a specialist in the storage of dangerous non-organic wastes, demonstrated the effectiveness of its waste management technology. The Special Rapporteur also visited the waste management facilities at the Bayer A.G. pharmaceutical company (Leverkusen, Rhineland).

A. Toxic and dangerous product management

35. The basic principle underlying German policy on wastes in general and dangerous or "special" wastes in particular is to avoid producing them in the first place if possible, both in industry and in the domestic environment. Accordingly, every encouragement is given to the production of long-life items and multi-purpose packaging materials. Ever since the 1970s, German society as a whole has been sensitized to environmental questions and the need to avoid waste production, and failing that the importance of recycling reusable materials. The country is moving towards a closed-cycle model of waste management in which manufactured items and substances are designed to be reused or reprocessed rather than discarded after use.

36. Until such a time, and insofar as is practicable, unavoidable refuse is recycled or stored in an appropriate environmentally-safe facility or disposed of using state-of-the-art-techniques which minimize the threat to the environment.

37. Detailed legislation covering almost every aspect of human life has been adopted by regional authorities, and the law must be observed by industries and individuals alike.

B. Legal and institutional context

38. The Waste Avoidance and Management Act (Abfallgesetz) was adopted in 1986 to tackle the problems caused by refuse production. Article 14 of this Act announced a series of ordinances on the recycling of refuse:

- Ordinance on packaging (Verpackungsverordnung);
- Ordinance on refuse oils (Altölverordnung);
- Ordinance on solvents;
- Ordinance on refuse paper (Altpapierverordnung);
- Ordinance on electronic refuse (Elektronikschrott-Verordnung);
- Ordinance on vehicles destined for scrap (Altauto-Verordnung);
- Ordinance on used batteries (Altbatterien-Verordnung);
- Ordinance on building waste (Baurestabfall-Verordnung);
- Ordinance on biological waste;
- Ordinance on waste water.

39. In 1994 the Waste Avoidance, Recovery and Disposal Act was reformulated in order to implement European law, particularly Directive 91/156 on waste and 94/31 on hazardous waste. The new Act broadens the definition of "waste" to include not only waste intended for disposal

but also recyclable waste. The expansion of the waste definition is based on environmental policy perspectives. Under previous waste management laws, substances normally were considered waste only if their owners wished to dispose of them; consequently, it was easy for waste owners to circumvent waste management law by simply claiming to intend to recycle. This was highly problematic, especially because the environmental standards for "recycling" of so-called "residual substances, recyclable substances or commodities" were very incomplete; this legal deficiency has often led to environmental scandals in the past.

40. The management of dangerous or special wastes is covered by the 1996 Ordinance on the codification of wastes requiring special supervision. This ordinance covers waste that, on the basis of its potential hazards, must by law always be supervised within a formalized documentation procedure. It covers both waste for recovery and waste for disposal.

41. The application of this legislation is overseen by regional environment ministries in cooperation with the Federal Government. Wastes may not be transported without a consignment note duly signed by the originating enterprise and the competent regional authorities. The traffic police may carry out checks at any time.

42. At national level there is also a Federal Environment Office reporting to the Ministry of the Environment, Nature Protection and Nuclear Safety. Its function is to carry out studies and advise federal and local authorities, enterprises and the public on best practice with regard to environmental protection.

43. In the light of their waste management policy, legislation and infrastructures, the authorities are of the opinion that Germany possesses a waste-processing capacity far exceeding national output, to a point where German enterprises operating in this field are actually importing wastes from other European countries in order to reduce costs. For this reason, the authorities claim that it is hardly conceivable that waste is being exported from Germany illegally. Germany is a party to the Basel Convention, which it enforces strictly. The three tables below indicate that the only wastes exported are those destined for recycling in countries which allow their importation and possess the appropriate processing capability.

Table 1

Total waste exports from Germany (1995-1997)

Destination country	Quantity (tonnes)		
	1995	1996	1997
Austria	8 192	6 480	34 716
Belgium	216 195	185 151	106 855
Bulgaria		138	7 380
Canada	1 256	216	627
China	496	924	333
Croatia	8 284	19 598	33 452
Czech Republic	108 460	94 086	99 216
Denmark	50 710	55 697	42 900
Estonia		1 945	
Finland	556	2 722	1 673
France	247 897	209 241	213 403
Hungary	44 089	49 221	50 399
India	3 661	1 216	1 006
Indonesia			40
Israel	35	39	
Italy	2 484	112 791	255 221
Kazakhstan	676	584	
Lithuania	935		11 138
Luxembourg	22 694	58 222	51 156
Malaysia		309	309
Mexico		440	37
Netherlands	167 253	175 938	168 094
Norway	12 564	13 728	5 423
Poland	18 831	14 699	10 629
Portugal	1 212	610	
Romania		93	6 410
Slovakia	22 907	27 972	10 418
Slovenia	1 459		
Spain	31 995	44 008	3 647
Sweden	37 393	42 710	46 852
Switzerland	29 745	25 014	51 233
Ukraine	110	243	13
United Kingdom	34 498	41 701	49 231
United States of America	23 144	34 149	14 147
Total	1 099 290	1 220 078	1 227 847
Dangerous wastes as per Basel Convention	740 272	321 718	600 749
Recyclable wastes	938 642	1 107 895	1 125 872
Disposable wastes	160 901	112 183	151 975

Source: Federal Environment Office, 25 October 1999.

Table II

Waste exports to developing countries (before 1998)

Destination country	Year	Quantity (tonnes)	Nature of waste	Disposal or recovery process
China	1996	924	Sundry electronic refuse (e.g., circuit boards)	Recovery of metals or metal compounds
India	1996	325	Plastic packaging materials	Recovery of organic substances
India	1996	340	Plastic, rubber and synthetic fibre refuse	Recovery of organic substances
India	1996	403	Plastic, rubber and synthetic fibre refuse	Recovery of organic substances
Malaysia	1996	309	Zinc	Recovery of metal or metal compounds
China	1997	36	Scrap	Recovery of metals or metal compounds
China	1997	84	Scrap	Recovery of metals or metal compounds
China	1997	214	Cables	Recovery of organic substances
India	1997	210	Shredded plastic	Recovery of organic substances
India	1997	796	Plastic, rubber and synthetic fibre refuse	Recovery of organic substances
Indonesia	1997	40	Iron filings and non-ferrous scrap	Recovery of metals or metal compounds
Malaysia	1997	309	Zinc	Recovery of metals or metal compounds

Source: Federal Environment Office, 25 October 1999.

Table III

Waste exports to developing countries (1998)

Destination country	Quantity (tonnes)	Nature of waste	Disposal or recovery process
Costa Rica	31	Clothing	Recovery of organic substances
India	0	Plastic packaging materials	Recovery of sundry inorganic substances
India	340	Shredded plastic	Recovery of organic substances
Philippines	10 634	Shredded plastic	Recovery of sundry inorganic substances

Source: Federal Environment Office, 25 October 1999.

44. It is true that the high storage or disposal costs of certain wastes (between 1,000 and 2,000 deutsche marks (DM)) could be a factor in forcing enterprises with insufficient resources to look for cheaper solutions outside Germany. When, exceptionally, cases of illicit traffic in dangerous wastes come to light – such as occurred with certain German exports to Albania, Portugal and Romania – there is a procedure and a special fund to secure their repatriation. The fund, set up in 1996, is maintained by contributions from all enterprises involved in waste management. It currently contains DM 16 million. Contributions are reimbursed to enterprises which commit no offences within a three-year period. This incentive has led to a decline in illegal exports from 12 cases in 1996 to 2 in 1999.

45. Under article 326, paragraph 2, of the Criminal Code, environmental crimes are punishable by five or six years' imprisonment for any person engaged in the illegal traffic of dangerous wastes. Likewise, under article 12 of the Ordinance on transport licences, it is an offence unlawfully to convey dangerous substances.

C. Technical cooperation

46. When asked about the possibility of helping to resolve the case of the barrels of toxic waste stored at the port of Asunción in Paraguay (see E/CN.4/1999/46/Add.1 and E/CN.4/2000/50), officials stated that the German Government would look favourably upon any request submitted to it in this matter. But for reasons of morality and efficiency, they believed it was important to try to establish the truth by determining the origin of the product involved and prosecuting those responsible. Germany is already taking part in a number of UNEP environmental protection projects, many in developing countries including Paraguay (decontamination of soils), either in the context of strengthening legislation or strengthening waste management capacity, as in China.

47. As part of its cooperation programme, Germany recovers wastes or obsolete chemicals produced by its enterprises which cannot be disposed of in developing countries. In Mozambique, the BASF corporation has decontaminated a site polluted by one of its subsidiaries.

D. Visit to facilities for the storage, processing and disposal of dangerous products

48. In order to demonstrate the control of storage, processing and disposal of dangerous wastes, the Special Rapporteur was invited to visit Kali und Salz's Herfa Neurode site in Hesse region and the various facilities belonging to the multinational corporation Bayer at Leverkusen in the Rhineland. The intention was to show, first of all, how a private enterprise manages waste produced by other industries, and second, how an industrial enterprise processes its own wastes.

1. Herfa Neurode site

49. The Herfa Neurode site is located 700 metres underground in a geological complex composed of impermeable, isolating rocks (potassium salts, chalk, clay, anhydrite). Since 1912, the company Kali und Salz has excavated 130 km^2 of underground galleries to extract potassium salts. These galleries are now used to store special wastes produced by German industry and others. The site has approximately 6 million m^3 of storage space and currently holds

2 million m^3 metres of wastes. Wastes arrive at the site presorted and packaged in vats, containers or sealed bags. The substances involved are dangerous inorganic wastes but they pose no threat to health. For security reasons and to protect the environment, they must be non-explosive, non-radioactive, non-flammable, non-gas-emitting and non-chemically reactive. All these properties, as well as the condition of the packaging, are checked on reception (using laboratory detection instruments), and if they fail to meet the prescribed standards they are returned to their point of origin.

50. The wastes are classified, logged in and stored by category (salt residues, metal-processing residues, chemical substance residues, hydrocarbon residues, residues containing mercury, cyanides or lead, condensers, transformers, etc.). In addition to the natural barriers separating the different categories of wastes at the site, man-made barriers such as brick walls form a supplementary layer of protection. Kali und Salz also handles wastes from Austria, Belgium, Denmark, Greece, Italy, Luxembourg, the Netherlands, and Switzerland. It is the view of the company that, as the potassium salt mine expands, the site may be used for storage purposes for the next 200 years.

2. The Bayer facilities at Leverkusen

51. In view of its significant financial and material resources and the large quantity of dangerous wastes which it generates in the course of its diverse operations (pharmaceuticals, chemistry, aluminium and plastics), the Bayer corporation, prompted by the Ministry of the Environment, has developed state-of-the-art facilities to process its own waste products. Its facility at Leverkusen comprises a waste water treatment plant, a dangerous wastes incinerator and an open dump for non-organic refuse. The corporation spends more than DM 1 billion a year on dangerous wastes processing. The Leverkusen facility processes 45,000 tonnes of waste a year and costs DM 200 million a year to operate.

52. Generally speaking, in order to reflect Government policy in its operations, Bayer's representatives say that both the parent company and its foreign subsidiaries are making strenuous efforts to make their production processes environment-friendly. Hence the adoption of the company Guidelines for Responsible Care in Environmental Protection and Safety, as follows:

(a) All employees bear responsibility for ensuring that the company's environmental protection objectives are achieved.

(b) Environmental protection does not only mean complying with laws and regulations. All employees are called upon to take supplementary measures on their own initiative.

(c) Production facilities must be operated in such a way as to ensure the safe handling of products and wastes.

(d) Production processes must be constantly reviewed and, where possible, improved to minimize raw material and energy inputs, emissions and waste generation. Waste material must be reusable, recyclable or capable of environmentally safe treatment and disposal. In-process waste-reduction methods should be given preference over end-of-process treatment or disposal.

As a result of this policy, Bayer estimates that it has reduced its total waste output (all categories, i.e. household waste, chemical waste, sewage sludge) from 850 tonnes in 1981 to 766 tonnes in 1998.

53. Responding to the Special Rapporteur's concern over allegations that Western firms do not apply the same standards in developing countries as in industrialized countries (working conditions for local employees; lower production standards; improper use of chemicals prohibited in Western countries which are exported, produced or employed without restrictions; transfer of heavily polluting industries; illicit export of dangerous wastes, etc.), a Bayer representative said that the company pursued an environmentally-friendly policy, and that it applied the same standards in developing countries as it demanded for its operations in industrialized countries. For example, in India and Latin America (Brazil, Mexico, Colombia), Bayer has installed exactly the same kind of incinerators, to exactly the same standards, as the ones which it operates in Germany. Moreover, in developing countries such as Pakistan it is endeavouring to recover obsolete stocks of pesticides or plant-health products from its factories in order to destroy them. To this end, the German Cooperation and Development Agency is working with Bayer to pinpoint the whereabouts of existing stocks. In all the countries where Bayer has a presence, the company operates in accordance with national legislation. Bayer's board has decided to apply German production standards in its subsidiaries. The Bayer representative stated that the company did not export dangerous wastes outside the European Union. Regarding the use of chemicals in lax safety conditions, and having regard to the climate in third-world countries, Bayer does not believe that the improper use of chemicals in developing countries is the responsibility of the manufacturer.

III. CONCERNS EXPRESSED BY NON-GOVERNMENTAL ORGANIZATIONS

A. Export of ships for extremely hazardous recycling operations

54. Both in Germany and the Netherlands, representatives of Greenpeace International urgently drew the attention of the Special Rapporteur to the health and environmental dangers posed by the export to Asia of old ships contaminated by dangerous substances. These ships originate in OECD member States, including the Netherlands and Germany. India is apparently the prime importer of ships destined for scrap (70 per cent of the total, providing 15 per cent of that country's steel needs), followed by Bangladesh, Pakistan, China and the Philippines.

55. Ships destined for ship-breaking contain significant quantities of asbestos, PCBs, hydraulic fluids, paints containing lead and/or other heavy metals, tributylin or TBT antifouling coatings, contaminated holding tanks and other substances rendering them hazardous waste and extremely dangerous to human health and the environment when scrapped in the existing ship-breaking yards.

56. According to the information provided by Greenpeace, 40,000 people are employed in the ship-breaking industry, working in conditions that are particularly dangerous for their life and health. For example, at Alang in Gujarat State, the largest ship-breaking yard in the world, workers are allegedly exposed on a daily basis, both at work and at rest, to asbestos, dioxin, and polychlorinated biphenyls (PCBs) in paints, plastic products, felt gaskets, machinery mounts, adhesives and electrical cable insulation on board the ships. They also inhale dangerous substances when they demolish the ships' hulls using blowtorches or when they burn irrecoverable items in the open. Fungicide paints applied to the hull and lead-containing paint also represent a health hazard and a threat to the environment. It is estimated that at least one worker dies every day and that 25 per cent of the workforce develops cancer in the medium term. Others are killed by explosions caused by the ignition of flammable gases trapped within the ships. It is reported that the soil, air and water in and around Alang are polluted as a result of the ship-breaking which takes place directly on the shoreline. Conditions are said to be similar at the ship-breaking yard in Mumbai (Bombay) and around Chittagong in Bangladesh. Greenpeace believes that working conditions might be better in China, although they are not entirely risk free.

57. Indian law prohibits the import of toxic waste from OECD countries; it also outlaws ship-breaking along its coastline. In May 1997, the Indian Supreme Court decided that no import should be made or permitted by any authority or any person of any hazardous waste which is already banned under the Basel Convention or to be banned hereafter with effect from the date specified therein. The 19 February 1991 Coastal Regulation Zone Notification prohibits the following activities within the Coastal Regulation Zone: manufacture or handling or storage or disposal of hazardous substances; discharge of untreated wastes; and effluents from industries. Moreover, the Central Pollution Control Board states in its Environmental Guidelines for Shipbreaking Industries that "Old vessels containing or contaminated with PCBs, waste asbestos dust and fibres, lead compounds are accordingly classified as hazardous materials. The customs authority and/or the concerned State Maritime Board should ensure this and issue a certificate to this effect that the vessel is free from prohibited [materials]". According to Greenpeace, these pronouncements have long been ignored and have scarcely begun to be enforced.

58. Under the Basel Convention, ships destined for the breaker's yard are deemed to be wastes and, to the extent that they contain dangerous substances, they are treated as hazardous wastes (art. 2, para. 1). When such ships destined for ship-breaking involve a transboundary movement, i.e., move from an area under the national jurisdiction of one State party to or through an area under the national jurisdiction of another State party, they are subject to the Basel Convention (and other applicable regional hazardous waste trade regimes). In the case that such ships move from an OECD country to a non-OECD country, the Basel ban applies and the movement is prohibited. Furthermore, under the Basel Convention, a transboundary movement from any State party to any of the ship-breaking operations in non-OECD countries is prohibited because, due to the conditions in the ship-breaking yards, it would not constitute "environmentally sound management" as required by the Convention.

59. A potential problem may exist, however, because a transaction to send a ship for breaking up may potentially avoid the Basel Convention by hiding the fact that the ship is destined for ship-breaking. If the transaction simply indicates a sale of the ship to, e.g., an owner

in a non-OECD country, and after the ship is in that country it is determined to be destined for ship-breaking, no transboundary movement of "waste" would appear to have occurred. This scenario represents a possible legal loophole which needs to be addressed.

60. There is also the legal problem of the large number of ships flying Liberian, Maltese, or Panamanian flags of convenience. When these vessels are sent to the breaker's yard, they are not legally covered by the prohibition on the export of dangerous wastes for disposal or recycling to other States parties by member States of OECD, the European Union and Liechtenstein. This is an issue which needs to be addressed within the framework of the International Maritime Organization (IMO), for example by establishing the responsibility of the owner of the vessel between its original purchase and its sale for scrap; in most cases this shipowner has registered offices in an OECD country. In June 1999 the United Nations Development Programme (UNDP) mandated the Basel Convention's technical working group to collaborate with IMO on the preparation of environmentally-friendly ship-breaking guidelines. This issue will also be considered at the Conference of States parties in Basel in December 1999.

B. Export of plastic wastes containing hazardous substances

61. The attention of the Special Rapporteur has been called to the potential danger for life and health that the export of plastic wastes represents. Because of the emission of large amounts of dioxins and the release of heavy metals like lead and cadmium, burning of PVC-covered cables is forbidden in the Netherlands.

62. Allegedly, each year 15,000 tonnes of PVC waste from cables is created in the Netherlands. There are also indications that a considerable amount of cable waste is imported from Germany and Eastern European countries. In the Netherlands, the biggest cable waste processor and dealer is the Van Hout Group. They own companies at several locations in the Netherlands, and also in Germany, Belgium, the United Kingdom and South-East Asia; in China they have a joint venture with the name Jan-Hout Metal Recycling. The Van Hout Group processes in the Netherlands 25,000 tonnes of cables a year. According to Van Hout all cables are mechanically stripped, in China as in the Netherlands. The copper fraction is sold (proceeds: around 1,000 Dutch guilders/1,000 kg). The mixed plastic fraction has a negative value; it is dumped or burned. The costs for dumping are 200 FL/1,000 kg, and burning 200-300 FL/1,000 kg. Several tests are conducted to separate the plastic mixture into the different plastics (PVC, PE and rubber), but in the Netherlands this is not economically profitable.

63. The Van Hout Group exports cable waste to China. Also other processing or trading companies confirmed that cables are exported mainly to China and that Van Hout is the biggest exporter. Pakistan was also named, but the export figures were considerably less than the ones for China. According to the firm, in 1998, Van Hout exported 5,000 tonnes to China. In the past, they exported far more - 15,000 to 20,000 tonnes. The Special Rapporteur was also informed that each year 80,000-100,000 tonnes of cables are exported by all Dutch companies together.

64. Export is economically interesting because in China the PVC-containing residue can be sold for 60/70 cents/kg, according to Van Hout. The value of secondary PVC in the Netherlands is 25-50 cents/kg. But the main reason for Chinese companies to buy cables is the copper content.

65. According to informants, cables are exported to several companies in China, including the Changshu Yuebo Copper Industry in Jiangsu (near Shanghai) and Signma Metals in Shanghai, which are among the biggest importers; both factories have copper-smelting facilities. Interviews with workers at the factories revealed that they are exposed to hazardous fumes emanating from the burning of cables containing PVC. Sooner or later, a lot of people working for these plants acquire health problems affecting kidneys, lungs and liver.

66. The Sigma factory is a big plant that looks clean and well-organized from the outside. But even for this big company it is unclear what happens inside. The stories of the workers are alarming. In the poor Chuangdong area south of Hong Kong, there are also many small family companies which buy cables from small traders; no doubt these small companies take hardly any safety measures and just burn cables.

67. According to European legislation, cable waste is "green list" waste, i.e. non-hazardous. This means that the export of cable waste is legal in the Netherlands, to whatever country, as long as it is recycled there. Nevertheless, the effect on the environment and human health resulting from poor recycling processes, is a matter for concern.

C. Human rights abuses resulting from the trade in pesticides

68. All the NGOs which the Special Rapporteur met were of the opinion that the incalculable consequences for life, health and the environment resulting from the trade in and use of pesticides, particularly in developing countries, were likely to become one of the major problems of coming decades. Some 5 million tonnes of pesticides are released into the environment every year. Despite the adoption in September 1998 of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (better known as prior informed consent (PIC), see also E/CN.4/2000/50, paras. 44-48), and the elaboration of legislation in a number of countries to regulate the export, import and use of pesticides, the situation in many developing countries is still a matter of concern owing to the existence of obsolete pesticide stocks. Moreover, there has been a sharp increase in the use of pesticides in these countries, which are unable adequately to control the use of especially dangerous products.

69. As a result, transnational companies should be held responsible not only for their exports, but also for the way in which their products are used. According to the representative of the NGO Pesticide Action Network (Pestizid Aktions-Netzwerk (PAN)), the statements by major German chemical companies such as Bayer, BASF or Hoechst that developing countries no longer import products which cannot be sold or used in Germany, and that they do not import obsolete products, must be treated with caution. These companies apparently abide by the laws of the importing country and ensure that they do not export products which are outlawed in those countries. The Bayer corporation claims that it is company policy not to export dangerous chemicals to countries lacking the proper legislation. However, the Special Rapporteur's

attention has been drawn to the situation on the ground, the existence of illicit trafficking in pesticides and the injury to life and health resulting from the improper use of these products i certain developing countries. The example of Cambodia has been cited. Over 50 kinds of dangerous pesticides and organophosphorous compounds such as parathion methyl, mevinph methamidophos and monocrotophos are apparently being illegally exported to Cambodia through Thailand and Viet Nam. One of these products, Folidol, is an extremely dangerous pesticide manufactured by Bayer A.G.; another, Thiodan, is manufactured by the German firm AgrEvo.

70. The pesticides find their way on to all markets in the capital city of Phnom Penh, as w as in the provinces. The labels are incomprehensible to Cambodians as they are printed in Th or Vietnamese. In Phnom Penh, the products are sold on market stalls specializing in goods u in agriculture. But even here the traders have little knowledge of the pesticides they offer. In provincial towns, the situation is slightly different: a wide range of pesticides are sold on less specialized stalls which sell a varied range of goods, one can find small bottles of Folidol amo instant coffee and milk powder, medicine and drug-store articles. The speed and effectivenes organophosphates convince farmers. Pesticides are put to use with no knowledge of target cultures, target pests, dosage, risks and protective measures. Hardly any farmers use the chemicals in the correct way. Different products are often mixed together without knowledge the intrinsic properties of the mixture.

71. Even if the labels were printed in Khmer, only a few would be able to read them. Sho the users be able to read and understand the labels, most of them would find it difficult to adh to the recommended protective measures. Protective clothing is expensive and unbearable to wear in the humid tropical heat. Wearing rubber boots and storing products in a locked place also unrealistic for many users. Clothing worn while applying pesticides is not necessarily changed or washed, but is treated just as any other piece of clothing. Instructions to leave a period of time between the last pesticide application and the harvest are not followed, so that sometimes the crop is sprayed the day before the harvest. It is even common for pesticides to used to kill fish either for private consumption or to be sold on the market.

72. In view of the extremely poor conditions under which pesticides are used, Pesticide Action Network informs the Special Rapporteur that it has requested Bayer to ensure that Folidol, which plays an important role in the Cambodian pesticide market, is not sold under those conditions in Cambodia.

IV. CONCLUSIONS AND RECOMMENDATIONS

73. The Special Rapporteur was pleased with her mission to Europe, following on her visi to Africa and Latin America in previous years. It enabled her to gain a more diverse and comprehensive understanding of the central theme of her mandate. She is grateful to the Ger and Netherlands Governments for being among the first to accede to her wish to visit industrialized countries. The constructive discussions which took place during her mission w distinguished by a spirit of complete cooperation and openness.

74. The Special Rapporteur is aware that Germany and the Netherlands are not representa of all the countries in the European Union or OECD, and she therefore hopes to visit other

industrialized countries in 2000. Despite the reservations which had been expressed about her mandate - for example, that the Commission on Human Rights was not the appropriate body to discuss the issue - the Special Rapporteur duly notes the willingness of the Governments of both countries to cooperate fully with all Special Rapporteurs. The representatives of both Governments stressed their commitment to sustainable development and measures to counteract the illicit trade in toxic and dangerous products and wastes, a commitment backed up by international obligations and specific national measures.

75. While attentive to the concerns of developing countries, the Governments of Germany and the Netherlands believe that the illicit trade in toxic products and wastes is a diminishing problem of limited scale, at least in the context of North/South relations. Problems arising from the transport of dangerous wastes - an increasingly rare occurrence - cannot be entirely excluded, such accidents can and do occur independently of the will of the Governments concerned, and steps have been taken to enforce the principle of the return of unwanted products and wastes to the country of origin at the expense of the initial shipper.

76. Germany drew attention to its special fund designed to handle such contingencies; contributions to this fund will actually be reduced for want of claims. The German authorities do not understand why Germany should be censured when in 1999 only two cases of illegal waste exports (to European countries) were brought to light and dealt with (the wastes were re-imported and the exporters were prosecuted). The Special Rapporteur notes the utility of such a fund and hopes that other developed countries will set up or report similar mechanisms.

77. Germany and the Netherlands are sympathetic to the argument that developing countries do not always have the means or the qualified personnel to understand the nature of the products entering their territory or to counteract illicit trafficking. Both Governments are resolved to increase technical assistance in this field. The Special Rapporteur also recommends greater information-sharing and a multiplication of focal points in order to activate interregional early-warning systems.

78. In cases where, for various reasons, it is impossible to trace the path taken by illicit traffic or to determine the country or firm of origin of dangerous products or wastes which have entered a developing country illicitly or illegally, the Special Rapporteur requested her interlocutors to examine ways in which States parties to the Basel Convention could voluntarily help to eliminate such products or wastes through procedures based on the provisions of the Convention.

79. During her mission, the Special Rapporteur took the opportunity to raise her interlocutors' awareness of alleged problems which have arisen in developing countries following the intensive and uncontrolled use of chemicals, agrotoxic products and persistent organic pollutants. There is a risk that this may become a particularly acute problem

80. She also raised the legal, economic, social, human and environmental problems caused by the export of contaminated ships destined for scrap in developing countries. Both Governments regard such ships as "hazardous wastes" as defined under the Basel Convention, and accordingly they intend to ban their export to non-OECD countries. The Special Rapporteur said that she would like to see the various aspects of this issue examined in the appropriate international forums (UNEP, secretariat of the Basel Convention, IMO) with a view to arriving at a satisfactory solution.

Annex

LIST OF PERSONS, DEPARTMENTS, ENTERPRISES AND ORGANIZATIONS CONSULTED BY THE SPECIAL RAPPORTEUR DURING HER MISSION

NETHERLANDS

Ministry of Foreign Affairs

Ms. Welment van Aardenne, Human Rights Department, Regional and Global Organizations Division

Ms. Kanta Adhin, Human Rights Department, Policy Development and Coordination Division

Mr. Michiel van der Zee, Director, Economic Cooperation Department

Ms. Sonja Kuip, Economic Cooperation Department, United Nations Funds and Economic Affairs Division

Mr. Ron Lander, International Environmental Policy, Instruments and Water Management Division

Minister of Housing, Spatial Planning and Environment

Mr. Kees Keuzenkamp, Head, Department of Hazardous Waste, Directorate of Waste Management Policy

Mr. Joost Cornet, Head, Enforcement Division, General Inspectorate of Environment

Mr. Johan Huijbregts, Inspector, General Inspectorate of Environment

Ministry of Health, Welfare and Sport

Mr. Herman Timmer, Head, Department of Pharmaceutical Affairs

Mr. Piet Vree, Deputy Chief Inspector for Health Care

Dr. Martyin ten Ham, Senior Adviser, International Department for Pharmaceutical Affairs

Committee on Human Rights of the Advisory Council on International Affairs

Dr. Willem van Genugten, member of the Committee, Professor of Human Rights, University of Nijmegen

Dr. Irene Dankelman, member of the Committee, Coordinator of Sustainable Development, Nijmegen University

Mr. Tiemo Oostenbrink, Executive Secretary, Committee on Human Rights

District Court of Justice of The Hague

Mr. Gert Haverkate, Senior Public Prosecutor

Dr. Roel Fernhout

Non-governmental organization

Ms. Claire Tielens, Responsible for Toxic Waste Campaign, Greenpeace-Netherlands

GERMANY

Ministry of Foreign Affairs

Mr. Klaus Metscher, Director, Human Rights Department

Dr. Gerhard Fulda, Deputy Director, Economic and Environmental Section

Mr. Gerd Poppe, Commissioner for Human Rights, Foreign Office

Dr. Sabine Wild, Senior Officer, Human Rights Department

The Federal Ministry of Environment, Nature Protection and Nuclear Safety

Ms. Probst, Federal Secretary of State for Environment, Nature Protection and Nuclear Safety

Mr. Rüdiger Wagner, Head of Division

Mr. Jürgen Schmölling, Director, Federal Environment Agency

Ms. Brach, Officer, Federal Environment Agency

Mr. Thomas Graner, Officer, Ministry of Environment

Ministry of Environment, Land Hessen

Mr. Carl-Otto Zubiller, Minister

Kali und Salz, Waste Disposal Site in Herfa Neurode

Mr. Harmut Behsen, Engineer and Manager

Mr. Hartmuth Baumert, Engineer and Manager

Bayer A.G., Leverkusen

Dr. Günter Mischer, Corporate Staff, Quality, Environment and Safety Policy

Dr. Joachim Lemke, Responsible for waste management plant, Leverkusen

Non-governmental organizations

Mr. Andreas Bernstorff, Director, Greenpeace-Germany

Ms. Carina Weber, Executive Director, Pesticide Action Network, Germany

Mr. Roland Fendler, Expert for Industrial Plant Safety, Oeko-Institute

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